

Aug 15, 2019

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

JONPAUL V. SOLIS,

Petitioner,

v.

STATE OF WASHINGTON,

Respondent.

2:19-cv-168-SAB

**ORDER SUMMARILY  
DISMISSING HABEAS  
PETITION**

Petitioner, a prisoner at the Coyote Ridge Corrections Center, brings this *pro se* Petition for Writ of Habeas Corpus by a Person in State Custody pursuant to 28 U.S.C. § 2254. The \$5.00 filing fee has been paid.

**PROPER RESPONDENT**

An initial defect with the Petition is that it fails to name a proper party as a respondent. The proper respondent in a federal petition seeking habeas corpus relief is the person having custody of the petitioner. *Rumsfeld v. Padilla*, 542 U.S. 426 (2004); *Stanley v. Cal. Supreme Court*, 21 F.3d 359, 360 (9th Cir. 1994). If the petitioner is incarcerated, the proper respondent is generally the warden of the institution where the petitioner is incarcerated. *See Ortiz-Sandoval v. Gomez*, 81 F.3d 891 (9th Cir. 1996). Failure to name a proper respondent deprives federal courts of personal jurisdiction. *See Stanley*, 21 F.3d at 360.

**ORDER SUMMARILY DISMISSING HABEAS PETITION -- 1**

## EXHAUSTION REQUIREMENT

Petitioner challenges his 2018 Spokane County guilty plea to first-degree rape of a child and first-degree child molestation. He was sentenced to 120 months' incarceration. Petitioner indicates that he did not appeal from the judgment of conviction. ECF No. 1 at 2.

In his grounds for relief, Petitioner argues that the State of Washington has no jurisdiction to decide federal constitutional matters. ECF No. 1 at 5-12. It has long been settled that state courts are competent to decide questions arising under the U.S. Constitution. *See Baker v. Grice*, 169 U.S. 284, 291 (1898) ("It is the duty of the state court, as much as it is that of the federal courts, when the question of the validity of a state statute is necessarily involved, as being in alleged violation of any provision of the federal constitution, to decide that question, and to hold the law void if it violate that instrument."); *see also Worldwide Church of God v. McNair*, 805 F.2d 888, 891 (9th Cir. 1986) (holding that state courts are as competent as federal courts to decide federal constitutional matters). Therefore, Petitioner's arguments to the contrary lack merit.

Additionally, before a federal court may grant habeas relief to a state prisoner, the prisoner must exhaust the state court remedies available to him. 28 U.S.C. § 2254(b); *Baldwin v. Reese*, 541 U.S. 27 (2004). Exhaustion generally requires that a prisoner give the state courts an opportunity to act on his claims before he presents those claims to a federal court. *O'Sullivan v. Boerckel*, 526 U.S. 838 (1999). A petitioner has not exhausted a claim for relief so long as the petitioner has a right under state law to raise the claim by available procedure. *See id.*; 28 U.S.C. § 2254(c).

To meet the exhaustion requirement, the petitioner must have "fairly present[ed] his claim in each appropriate state court (including a state supreme court with powers of discretionary review), thereby alerting that court to the federal nature of the claim." *Baldwin*, 541 U.S. at 29; *see also Duncan v. Henry*,

1 513 U.S. 364, 365–66 (1995). A petitioner fairly presents a claim to the state court  
2 by describing the factual or legal bases for that claim and by alerting the state court  
3 “to the fact that the ... [petitioner is] asserting claims under the United States  
4 Constitution.” *Duncan*, 513 U.S. at 365–366; *see also Tamalini v. Stewart*, 249  
5 F.3d 895, 898 (9th Cir. 2001) (same). Mere similarity between a claim raised in  
6 state court and a claim in a federal habeas petition is insufficient. *Duncan*, 513  
7 U.S. at 365–366.

8 Furthermore, to fairly present a claim, the petitioner “must give the state  
9 courts one full opportunity to resolve any constitutional issues by invoking one  
10 complete round of the State's established appellate review process.” *O’Sullivan*,  
11 526 U.S. at 845. Once a federal claim has been fairly presented to the state courts,  
12 the exhaustion requirement is satisfied. *See Picard v. Connor*, 404 U.S. 270, 275  
13 (1971). It appears from the face of the Petition and the attached documents that  
14 Petitioner has not exhausted his state court remedies as to each of his grounds for  
15 relief. Indeed, Petitioner affirmatively represents that he did not exhaust his state  
16 court remedies.

### 17 **GROUND FOR FEDERAL HABEAS RELIEF**

18 Petitioner asserts that the Washington state constitution contradicts the  
19 federal constitution regarding the Fifth Amendment right to “presentment or  
20 indictment of a Grand Jury.” He claims “no bill of indictment” was brought against  
21 him rendering his arrest, conviction and imprisonment illegal.

22 Petitioner seems to argue that because the state courts have defied “federally  
23 established procedures and processes for the adjudication of crimes” only “a court  
24 of federal jurisdiction” has jurisdictional authority over his claims. His bald  
25 assertion that “due process of the law was ignored” is unsupported by his factual  
26 allegations.

27 The United States Supreme Court stated long ago: “Prosecution by  
28 information instead of by indictment is provided for by the laws of Washington.

1 This is not a violation of the Federal Constitution.” *See Gaines v. State of*  
2 *Washington*, 277 U.S. 81, 86 (1928). Consequently, Petitioner’s assertions to the  
3 contrary presented in his four grounds for federal habeas relief are legally  
4 frivolous.

5 Because it plainly appears from the petition and accompanying documents  
6 that Petitioner is not entitled to relief in this Court, **IT IS ORDERED** the petition,  
7 ECF No. 1, is **DISMISSED** pursuant to Rule 4, Rules Governing Section 2254  
8 Cases in the United States District Courts.

9 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order,  
10 enter judgment, provide copies to Petitioner, and close the file. The Court certifies  
11 that pursuant to 28 U.S.C. § 1915(a)(3), an appeal from this decision could not be  
12 taken in good faith, and there is no basis upon which to issue a certificate of  
13 appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). A certificate of  
14 appealability is therefore **DENIED**.

15 **DATED** this 15<sup>th</sup> day of August 2019.  
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A handwritten signature in blue ink, reading "Stanley A. Bastian", is written over a horizontal line.

Stanley A. Bastian  
United States District Judge